

32201
DO

SERVICE DATE - OCTOBER 10, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-471 (Sub-No. 4X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY--
ABANDONMENT EXEMPTION--IN CRAWFORD, WILSON, ELK AND GREENWOOD
COUNTIES, KS AND OSAGE AND TULSA COUNTIES, OK

Decided: October 3, 2001

South Kansas and Oklahoma Railroad Company (SKO) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon: (1) a 35-mile line of railroad between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall, in Osage and Tulsa Counties, OK; (2) a 6-mile line of railroad between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee, in Crawford County, KS; and (3) a 23.5-mile line of railroad between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk, and Greenwood Counties, KS. Notice of the exemption was served and published in the Federal Register on October 6, 2000 (65 FR 59891-92). On October 10, 2000, the Board received a notice of intent to file an offer of financial assistance (OFA) to purchase the 6-mile portion of the right-of-way between milepost 359.0 and milepost 365.0 in Crawford County, KS. While no OFA was ultimately filed, the effectiveness of the exemption was delayed until November 30, 2000, to permit the potential offeror to obtain needed information. On November 29, 2000, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for SKO to negotiate a trail use agreement with: (1) the City of Pittsburg for the 6-mile portion of the right-of-way between milepost 359.0 near Pittsburg and milepost 365.0 near Cherokee; and (2) the Trust for Public Land (TPL) for the 35-mile portion of the right-of-way between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall.¹ On December 29, 2000, a NITU was served authorizing a 180-day period for SKO to negotiate a trail use agreement with the American Trails Association for the 23.5-mile portion of the right-of-way between milepost 438.5 at Severy and milepost 415.0 at Fredonia. The negotiation period under the NITU was extended at the request of TPL to November 25, 2001, for the portion of the right-of-way between milepost 157.10 and milepost 188.0 in Tulsa and Osage Counties, OK, by decision served June 1, 2001.²

¹ The November 29 decision imposed a 180-day public use condition that expired on May 29, 2001.

² The June 1, 2001 decision also stated that, on March 15, 2001, TPL and SKO consummated
(continued...)

In a joint motion filed on September 25, 2001, TPL and the City of Tulsa (City) request substitution of the City as the new interim trail user and termination of TPL as the interim trail user for the portion of the right-of-way between milepost 153.05 and milepost 157.10 pursuant to 49 CFR 1152.29(f)(1).³

The City submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that the use of the right-of-way as a trail is subject to possible future reconstruction and reactivation of the right-of-way for rail service. The parties' submission meets the requirements of 49 CFR 1152.29(f). Accordingly, the request will be granted.

This decision does not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. As to the segment between milepost 153.05 and milepost 157.10, the NITU served November 29, 2000, is vacated for that portion of the right-of-way and the City is authorized to replace TPL as the new trail user over the involved right-of-way, effective on the service date of this decision, subject to any environmental conditions previously imposed. November 3, 2000.
3. The new trail user is required to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the new trail user's continuing to meet the financial obligation for the right-of-way.

²(...continued)

a trail use/rail banking agreement for the portion of the right-of-way between milepost 153.0 and 157.10. TPL further stated that, on the same date, it and the City entered into an agreement with respect to that part of the line and that they will be filing a joint notice of transfer and a request for substitution pursuant to 49 CFR 1152.29(f).

³ TPL will continue to negotiate with SKO with respect to the portion of the right-of-way between milepost 157.10 and milepost 188.0.

5. If the new trail user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that trail use be vacated on a specified date.

6. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary